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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,920	02/02/2007	Timothy Rex Bunce	71,049-007	5476

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450 West Fourth Street  
Royal Oak, MI 48067

EXAMINER

NELSON, LINDSAY ANN

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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03/25/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/575,920

**Applicant(s)**

BUNCE ET AL.

**Examiner**

LINDSAY NELSON

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 14 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/23/2009 have been fully considered but they are not persuasive.
2. The Applicants argue that the reference relied upon, that is WO 03/086029 is not considered to be "by another" according to MPEP 2136.04 and MPEP 2136.05. However, the MPEP clearly states in 2136.04 that the inventive entity is indeed different if not all of the inventors are the same. *In re Land*, 368 F.2d 866, 151 USPQ 621 (CCPA 1966). In *In re Land*, separate U.S. patents to Rogers and to Land were used to reject a joint application to Rogers and Land under 35 U.S.C. 102(e) /103. The inventors worked for the same company (Polaroid) and in the same laboratory. All the patents flowed from the same research. In addition, the patent applications were prepared by the same attorneys, were interrelated and contained cross-references to each other. The court affirmed the rejection because (1) the inventive entities of the patents (one to Rogers and one to Land) were different from the inventive entity of the joint application (Rogers and Land) and (2) Land and Rogers brought their knowledge of their individual work with them when they made the joint invention (emphasis added).
3. Furthermore, the Applicants request clarification on the objection to claims "2-2". The Examiner did mean to put "21-24" as assumed by the Applicants, and furthermore apologizes for any misunderstandings.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 – 13, 15 – 18, and 20 - 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Goodwin et al, WO 03/086029 (Equivalent of US Patent No. 7,438,882).

6. With regard to claims 1 and 15 Goodwin discloses a method of forming a gel and/or powder of a metallic oxide, metalloid oxide and/or a mixed oxide or resin thereof from one or more respective organometallic liquid precursor(s) and/or organometalloid liquid precursor(s) by oxidatively treating said liquid in a non-thermal equilibrium plasma discharge and/or an ionized gas stream resulting therefrom and collecting the resulting product (abstract), which reads on the claimed steps 1-i, 1-iii, and 1-iv. Goodwin further discloses that the temperature for use of the non-thermal equilibrium plasma techniques typically operate at temperatures below 200 °C, preferably between room temperature (20 °C) and 70 °C (column 3, lines 54 – 59). Furthermore, the process of forming the excited gas is substantially the same in both Goodwin and instant specification (column 6, lines 30 – 35) and thus would result in the gas species being substantially free of electrical charges as admitted in the instant specification [0010] which reads on the claimed step 1-ii. Attention is brought to Figure 1 of Goodwin which is substantially

similar to that of instant Figure 3 in which the liquid precursor meets with the treated gas downstream and is allowed to react, which reads on the claimed step 1-iii.

7. With regard to claim 2, Goodwin further discloses that any suitable non-thermal equilibrium plasma equipment may be used to undertake the method of their invention and make mention of dielectric barrier discharge (column 6, lines 30 – 35), which is an appropriate means to conduct instant method according to instant specification and reads on the claimed electrical discharge apparatus.

8. With regard to claim 3, Goodwin further discloses that the liquid precursor is either retained in a container or is introduced into the reactor (column 7, lines 14 - 17), wherein the reactor reads on the container.

9. With regard to claims 4 – 5 and 20 - 24, attention is brought to Figure 1 of Goodwin which is substantially similar to that of instant Figure 3 in which the liquid precursor meets with the treated gas downstream and is allowed to react, which reads on the claimed use of a fluidised or circulating bed.

10. Regarding claims 6 and 9-10, Goodwin further discloses that the liquid precursor can be a number of oxides of organometallics or organometalloids, including metals of columns 3a and 4a of the periodic table (including titanium, zirconium, iron, aluminum, indium and lead) (column 3, lines 60 - 66) and boron, silicon, germanium, arsenic, antimony and tellurium (column 4, lines 6 - 10) which reads on the liquid precursor being a liquid and being either made of those specific metals or metalloids.

11. Regarding claim 7, Goodwin further discloses that the liquid precursor can be introduced into the apparatus by way of a liquid spray through and atomiser or

nebuliser, wherein the precursor may be atomized using any conventional means (column 6, lines 5 – 8) which reads on the liquid precursor being in the form of an atomized liquid.

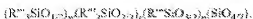
12. Regarding claim 8, Goodwin further discloses that the liquid precursor may be introduced into the plasma discharge or resulting stream in the absence of a carrier gas by direct injection (column 5, lines 63 – 67) which reads on the liquid precursor being directly injected.

13. Regarding claim 11 and 12, Goodwin further discloses that the liquid precursors have, as suitable precursors, the general formula W-A-W wherein A is  $\text{R}^n\text{SiO}_{4-5/2}$

14. Wherein R<sup>n</sup> is independently an alkyl group having from 1-10 carbons, an alkenyl group such as a vinyl, propenyl, and/or hexenyl, hydrogen, an aryl group, a halide, an alkoxy, an epoxy, an acryloxy, an alkylacryloxy, or a fluorinated alkyl group, and s is 0 – 2 and W can be  $\text{—Si(R}^m\text{)}_3\text{X}$  wherein R<sup>m</sup> is as defined above and X may be the same as R<sup>m</sup> or a hydrolysable group such as an alkoxy, epoxy, a methacryloxy group or a halide (column 5 lines 5- 42) which reads on the claimed organometalloid compound.

15. Regarding claim 13, Goodwin further discloses that the liquid precursor viscosity is preferably between 0.65 and 1000 mPa·s (column 5, lines 26 - 28) which reads on the claimed viscosity range.

16. Regarding claims 16 and 18, Goodwin further discloses a silicone resin of the formula



17. Wherein each R<sup>m</sup> is independently an alkyl, alkenyl, aryl, H, OH, and  $w+x+p+z=1$  and w and x are less than 0.9 and p+z is greater than 0.1 which is formed by the process of their invention (column 4, lines 14 – 21), which reads on an organometalloid oxide powder as claimed.

18. Regarding claim 17, Goodwin discloses that the average particle size of particles formed is from 1 nm to 2000  $\mu\text{m}$  (column 5, lines 52 – 54) which reads on the claimed particle size.

19. Regarding claim 25, Goodwin further discloses the use of the powdered particles in optoelectronics, photonics, solid-state electronics, flexible electronics, optical devices, flat panel displays and solar cells (column 9, lines 14 - 18) which reads on the claimed use of the powder.

#### ***Allowable Subject Matter***

20. The following is a statement of reasons for the indication of allowable subject matter:

21. Claims 14 and 19 require that the liquid precursor should be an organic compound. Goodwin does not disclose that liquid precursors can be used in their apparatus.

22. Yadav, US Patent number 6,569,397 (hereinafter Yadav) discloses a method for producing fine powders of oxides, carbides, nitrides, borides, chalcogenides, metals and alloys (abstract) by a substantially similar method (see Figure 2). Example 5 of Yadav further shows the formation of a silicon powder via the above method useful biomedical

applications, electronic and electromagnetic devices, films and coatings, and also for sensors (EXAMPLE 5). Furthermore, Yadav discloses that the precursor can be organic compounds such as methane, ethylene, acetylene, ethane, benzene, and others. However, Yadav does not disclose the appropriate temperature range. Yadav discloses a temperature range which includes heats above 3000 °C which would decompose most of the biological powders produced by instant claims. These claims would be considered allowable pending an updated search if rewritten in independent format.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSAY NELSON whose telephone number is (571)270-7735. The examiner can normally be reached on M-Th, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LN

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